

**\*\* § 362 INFORMATION SHEET \*\***

Thomas Michael Brown and  
Kathleen Rose Brown  
 DEBTOR

14-51561-btb  
 Case No.

\_\_\_\_\_  
 Motion #:

Capital One, N.A.  
 MOVANT

7  
 CHAPTER

**Certification of Attempt to Resolve the Matter Without Court Action:**

*Moving counsel hereby certifies that pursuant to the requirements of LR 4001(a)(2), an attempt has been made to resolve the matter without court action, but movant has been unable to do so.*

Date: June 26, 2015

Signature /s/Nathan F. Smith

Nathan F. Smith, Attorney for Movant

PROPERTY INVOLVED IN THIS MOTION: 123 ANDREW LANE, RENO, NV 89521

NOTICE SERVED ON: Debtor(s) X; Debtor's Counsel X; Trustee X;

DATE OF SERVICE: June 26, 2015

<p><b><u>MOVING PARTY'S CONTENTIONS:</u></b>          The EXTENT and PRIORITY of LIENS:</p> <p>1st \$ <u>1,294,360.42</u>          2nd \$ _____          3rd \$ _____          4th \$ _____          Other: <u>Cost of Sale \$120,000.0000</u>          Total Encumbrances: <u>\$ 1,414,360.42</u></p> <p>APPRAISAL of OPINION as to VALUE:  <u>\$1,500,000.00 per Debtor's Schedules</u></p>	<p><b><u>DEBTOR'S CONTENTIONS:</u></b>          The EXTENT and PRIORITY of LIENS:</p> <p>1st \$ _____          2nd \$ _____          3rd \$ _____          4th \$ _____          Other: \$ _____          Total Encumbrances: \$ _____</p> <p>APPRAISAL of OPINION as to VALUE:</p>
<p><b><u>TERMS of MOVANT'S CONTRACT</u></b>  <u>with the DEBTOR(S):</u></p> <p>Amount of Note: <u>\$1,433,000.00</u>          Interest Rate: <u>6.750%</u>          Duration: <u>30 years</u>          Payment per Month: <u>\$8,237.53</u>          Date of Default: <u>April, 2015</u>          Amount in Arrears: <u>\$16,475.06</u>          Date of Notice of Default: <u>N.A.</u></p> <p><b><u>SPECIAL CIRCUMSTANCES:</u></b>          The undersigned hereby certifies that an attempt has been made to confer with debtors counsel, or with debtors and that more than three (3) business days have expired, and that after sincere effort to do so, counsel has been unable to resolve this matter without court action.          SUBMITTED BY: <u>Nathan F. Smith</u>          SIGNATURE: <u>/s/ Nathan F. Smith</u></p>	<p><b><u>DEBTOR'S OFFER of "ADEQUATE" PROTECTION</u></b>  <u>for MOVANT</u></p> <p>• • • • • • • • • •</p> <p><b><u>SPECIAL CIRCUMSTANCES:</u></b></p> <p>SUBMITTED BY:          SIGNATURE:</p>

1 KEVIN HAHN, Nevada Bar No.9821  
2 NATHAN SMITH, Nevada Bar No.12642  
3 MALCOLM ♦ CISNEROS, A Law Corporation  
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**E-FILED JUNE 26, 2015**

Attorneys for Capital One, N.A.

**UNITED STATES BANKRUPTCY COURT**

**DISTRICT OF NEVADA**

In re

Chapter 7

THOMAS MICHAEL BROWN AND  
KATHLEEN ROSE BROWN,

Case No. 14-51561-btb

Debtors,

Hearing Date: July 28, 2015

Hearing Time: 10:00 AM

Location: C. Clifton Young Federal Building  
Courtroom No. 2

**MOTION FOR RELIEF FROM AUTOMATIC STAY**

Capital One, N.A., and its Successors and/or Assigns ("Movant."), by and through Nathan F. Smith of MALCOLM ♦ CISNEROS, A Law Corporation, hereby moves this Court, pursuant to §§ 362(d)(1) for an Order Terminating the Automatic Stay as it pertains to certain real property located in Washoe County, NV.

This Motion is based upon the attached Memorandum of Points and Authorities the § 362 Information Sheet, filed concurrently herewith, and the documents filed in support of the Motion.

Dated: June 26, 2015

Respectfully Submitted,

MALCOLM ♦ CISNEROS, A Law Corporation

*/s/ Nathan F. Smith*

Nathan F. Smith

Nevada Bar No. #12642

Attorney for Capital One, N.A.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I.**

**INTRODUCTORY STATEMENT**

Capital One, N.A. respectfully requests that the Court grant it relief from the automatic stay because there is no equity in the Property for the benefit of the Debtors or the estate and Movant's interest in the Property is not adequately protected.

**II.**

**STATEMENTS OF FACTS**

1. **The Secured Debt.** The Debtors are the borrowers under a promissory note ("Note") secured by deed of trust ("Deed") on the real property commonly known as 123 Andrew Lane, Reno, NV 89521 (the "Property"). True and correct copies of the Note and Deed of Trust are attached hereto as Exhibits "1" and "2", respectively. A true and correct copy of the Assignment of Mortgage is attached hereto as Exhibit "5". The Debtors acknowledge the secured debt in their Schedules. True and correct copies of the Debtors' Schedules "A" and "D" are attached hereto as Exhibit "3."

2. **The Default Under The Note.** Capital One, N.A.'s Note and Deed are post petition due for the April 2015 payment. A copy of the payment history is attached as Exhibit "4". As a result of the default, Capital One, N.A. desires to record a Notice of Default and Election To Sell against the Property. The total delinquency under the Note is set forth in detail in Exhibit "6" to the Motion.

3. **The Debtor's Interest In The Property.** The Debtors are the owners of record of the Property.

4. **The Filing Of The Instant Petition.** On or about September 16, 2014, Thomas Michael Brown and Kathleen Rose Brown filed the instant Chapter 7 Petition as Case Number 14-51561-btb.

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5. **The Total Indebtedness Under The Note.** The total indebtedness owed to Capital One, N.A., under the Note, exclusive of attorney fees, other miscellaneous costs, and interest that continues to accrue, is as follows:

Principal Balance	\$1,289,556.88
Interest Accrued to	\$7,628.40
Late Charges	\$621.14
Escrow	(\$3,446.00)
<b>Total</b>	<b>\$1,294,360.42</b>

6. **The Total Liens On The Property.** The Property is encumbered by the following liens:

<u>SECURED CREDITOR</u>	<u>LIEN AMOUNT</u>
1.Capital One, N.A.	<b>\$1,294,360.42</b>

**TOTAL \$1,294,360.42**

7. **The Value Of The Property.** The amount due and owing under the Note (excluding costs of sale) is \$1,294,360.42. By the Debtors' own admission, the Property has a fair market value of only \$1,500,000.00. True and correct copies of the Debtors' Schedules "A" and "D" are attached hereto as Exhibit "3."

### **III.**

#### **REQUEST FOR JUDICIAL NOTICE**

Pursuant to Federal Rule of Evidence, ("FRE") 201 in proceedings under Title by Rule Federal Rules of Bankruptcy Procedure ("FRBP") 9017, Capital One, N.A. respectfully requests that the Court take judicial notice of the following facts:

1. The Debtors contend that the Property has a fair market value of \$1,500,000.00. See Exhibit "3."

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IV.

**CONCLUSION**

Based upon the foregoing Capital One, N.A. respectfully requests that this Court grant it relief from stay pursuant set forth in §§ 362 (d)(1) , including a waiver of the 14-day stay to Federal Rule of Bankruptcy Procedure 4001 (a)(3). A Proposed Order is attached hereto as Exhibit “7.”

Dated: June 26, 2015

Respectfully Submitted,

MALCOLM ♦ CISNEROS, A Law Corporation

*/s/ Nathan F. Smith*

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Nathan F. Smith

Nevada Bar No. 12642

Attorneys for Capital One, N.A.